IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

O.J.APPEAL No 10 of 1997

in

COMPANY APPLICATIONNo 303 of 1996

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

NISHANTAJ NAHATA, DIRECTOR

Versus

O.L. OF MRINAL DYEING & MFG.

Appearance:

MR SN SOPARKAR for Petitioners

SERVED for Respondent No. 1

MR PC KAVINA for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT and

MR.JUSTICE C.K.BUCH

Date of decision: 02/02/98

ORAL JUDGEMENT (Per Y.B. Bhatt J.)

1. Heard the learned counsel for the appellants and

learned counsel for the respondent no.2. Respondent no.1 i.e. Official Liquidator is absent though served.

2. As a result of the hearing we find that the learned company Judge has cogently and adequately and, in our opinion, correctly dealt with all the contentions raised by the present appellants.

3. The first contention sought to be raised viz. that the permission sought for continuation of the criminal proceedings under section 138A of the IPC pertained to a period prior to the date of the passing of the winding up order, and that therefore such prosecution would not lie, and/or no application under sub-section (1) of section 446 of the Companies Act would lie, has been dealt with in para 4 of the impugned decision. As a result of the discussion on this issue, learned counsel for the appellants states that he does not seriously assert the same, inasmuch as the same has been discussed and rejected as stated hereinabove.

4. The next submission sought to be raised by the learned counsel for the appellants is in the context of sub-section (3) of section 446 of the Companies Act, and is to the effect that on a true and correct interpretation of sub-section (3), all proceedings in respect of which the company court grants permission, either to file the proceedings or to continue pending proceedings, must stand transferred to the company court. In other words, the contention is that the word "may" as found in sub-section (3), must and without exception be read as "shall".

4.1 This contention also is required to be noted only to be rejected. This contention, if we were at all inclined to accept, would lead to incongruous and/or absurd consequences.

4.2 Suffice it to say in brief that sub-section (1) of section 446 firstly creates a jurisdictional bar against the institution and/or continuation of proceedings which were or are proposed to be filed before the appropriate fora in accordance with the relevant statute, once the winding up order is passed in respect of the company which is facing the proceedings before some other forum. In other words, once a winding up order is passed by the company court, the permission of the company court becomes mandatory, subject to such terms and conditions it may impose, for institution or continuation of the proceedings, which were otherwise legitimately filed or could be filed before the

appropriate forum. So far as sub-section (2) of section 446 is concerned, the same provides a non-obstante provision, and without reference to any other law for the time being in force, enables, by conferring concurrent jurisdiction upon the company court to proceed therewith, without in any manner ousting the jurisdiction of the other forum which would otherwise have jurisdiction to entertain and dispose of the proceedings in question.

4.3 Now coming to sub-section (3) of section 446, if we accept the contention of learned counsel for the appellant to the effect that the word "may" as found in the said sub-section, must necessarily be read as "shall", the question of concurrent jurisdiction being conferred upon the company court under sub-section (2) becomes a redundant concept.

4.4 Furthermore, if we consider sub-section (3) to mean that all proceedings by or against the company (and not only proceedings against the company as contemplated by sub-section (1)) must be transferred to and disposed of by the company court, the question of the company court granting permission to initiate or to continue proceedings against the company, by virtue of the power conferred under sub-section (1), again becomes redundant. In other words, if the company court by virtue of sub-section (3) is bound to recall all pending proceedings by or against the company and to try and dispose of such proceedings only before itself, the issue contemplated by sub-section (1) viz. granting permission to initiate or continue proceedings filed before other forums, becomes a non-issue. Thus, accepting the contention of learned counsel for the appellant in the context of his interpretation of sub-section (3), renders illusory and ineffective, both the operation as also the scope and effect, of sub-section (1). For these reasons we are unable to uphold the contention of the learned counsel for the appellants and the same is, therefore, rejected.

4.5 Another reason, and on an independent footing, for rejecting the aforesaid contention would be, that to accept the interpretation of learned counsel for the appellants would amount to seriously prejudicing the rights of appeal and/or revision which may be available to the contesting parties under the relevant statutes, depending upon the nature of those proceedings. It goes without saying that different statutes confer different rights so far as initiation of proceedings by or against the company are concerned. Depending upon the statute inolved, the concerned parties may be conferred with

either a right of appeal or limited right of appeal, followed by a revision or a further appeal. Conversely, different statutes may bar an appeal or may bar a further appeal and/or revision. However, if we were to accept the contention of the learned counsel for the appellants, and if the proceedings could only be continued or finally decided by the company court, the various rights of parties pertaining to appeals or revisions and/or the bar pertaining to appeals and/or revisions, would be affected prejudicially, either in favour of the company or the other side. In other words, the statutory right of appeal and/or revision, or a bar thereto, would be rendered infructuous and/or illusory. For this reason also we cannot accept the contention as raised before us.

5. We have dealt with the contentions raised by the learned counsel for the appellants in brief and without an exhaustive and detailed order, inasmuch as the same is not sought for by the learned counsel for the appellants. We are also informed by both the learned counsel that there is no decision of the Supreme Court and/or any other High Court on the interpretation of sub-section (3), as presented by learned counsel for the appellant. For this reason as well, we have only dealt with the contentions as placed before us, and in this limited context.

6. No other contention is raised.

7. In the premises aforesaid, this appeal is dismissed. Notice is discharged with costs.

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